

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
 )  
 PLAINTIFF, ) CASE NO. 10CR1805-JAH  
 )  
 VS. ) SAN DIEGO, CALIFORNIA  
 )  
 DANIEL EDWARD CHOVAN, ) MONDAY,  
 ) JUNE 21, 2010  
 DEFENDANT. ) 10:53 A.M.  
 \_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MOTION HEARING

BEFORE THE HONORABLE JOHN A. HOUSTON  
UNITED STATES DISTRICT JUDGE

CAMERON P. KIRCHER  
CSR NO. 9427, RPR, CRR, RMR  
880 FRONT STREET, ROOM 4290  
SAN DIEGO, CALIFORNIA 92101  
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1 APPEARANCES:

2 FOR THE GOVERNMENT: LAURA E. DUFFY, U.S. ATTORNEY  
3 BY: CAROLINE PINEDA HAN, ESQ.  
4 ASSISTANT U.S. ATTORNEY  
880 FRONT STREET  
SAN DIEGO, CALIFORNIA 92101

5  
6 FOR THE DEFENDANT: FEDERAL DEFENDERS OF SAN DIEGO  
7 ATTORNEYS AT LAW  
8 BY: JOSHUA J. JONES,, ESQ.  
225 BROADWAY STREET  
SUITE 900  
SAN DIEGO, CALIFORNIA 92101

1 SAN DIEGO, CALIFORNIA - MONDAY, JUNE 21, 2010

2 10:53 A.M.

3 THE CLERK: NO. 15 IS 10CR1805, THE UNITED STATES OF  
4 AMERICA VERSUS DANIEL EDWARD CHOVAN.

5 MR. JONES: JOSHUA JONES, FEDERAL DEFENDERS, ON  
6 BEHALF OF MR. CHOVAN, WHO IS PRESENT ON BOND.

7 THE COURT: GOOD MORNING, SIR.

8 THE DEFENDANT: GOOD MORNING, YOUR HONOR.

9 MS. HAN: GOOD MORNING, YOUR HONOR. CAROLINE HAN ON  
10 BEHALF OF THE UNITED STATES.

11 THE COURT: GOOD MORNING.

12 SIR, YOU CAN HAVE A SEAT, IF YOU'D LIKE. YOU CAN  
13 HAVE A SEAT. WE'RE HERE ON YOUR MOTIONS TO DISMISS.

14 COUNSEL.

15 MR. JONES: YES, YOUR HONOR.

16 A COUPLE PRELIMINARY ISSUES. I'M PREPARED TO  
17 PROCEED ON THE MOTIONS THAT WE HAVE. I AM GOING TO BE  
18 REQUESTING ONE FURTHER MOTIONS DATE. I HAVE IDENTIFIED, I  
19 THINK, TWO OTHER MOTIONS THAT NEED TO BE FILED IN THE MATTER.

20 ALSO, DEPENDING ON THE COURT'S RULING REGARDING OUR  
21 FIRST MOTION REGARDING THE SECOND AMENDMENT, WE DO THINK IT  
22 MIGHT BE APPROPRIATE TO HAVE SUPPLEMENTAL BRIEFING, SHOULD  
23 THE COURT DETERMINE TO ANALYZE THE STATUTE UNDER AN  
24 INTERMEDIATE OR STRICT SCRUTINY, TO GIVE THE GOVERNMENT AN  
25 OPPORTUNITY TO MEET THEIR BURDEN IN THAT MATTER.

1           THE COURT: ALL RIGHT.

2           MR. JONES: WITH REGARD TO THE MOTIONS THAT ARE  
3 CURRENTLY ON FILE, THE FIRST MOTION IS --

4           THE COURT: COULD YOU BRING THE OTHER MIC IN, SIR.

5           MR. JONES: SURE.

6           WITH REGARD TO THE MOTIONS THAT ARE CURRENTLY ON  
7 FILE, THE FIRST MOTION IS THE MOTION TO DISMISS, STATING THAT  
8 922(G)(9) INFRINGES UPON MR. CHOVAN'S CONSTITUTIONAL RIGHT TO  
9 BEAR ARMS UNDER THE SECOND AMENDMENT.

10           THE GOVERNMENT'S RESPONSE TO THE MOTION IS TO INVOKE  
11 THE LANGUAGE IN HELLER THAT'S BEEN QUOTED IN A LOT OF SIMILAR  
12 CASES UNDER 922(G)(1) --

13           THE REPORTER: I'M SORRY. 922(T)?

14           MR. JONES: "G" AS IN "GOAT."

15           -- 922(G)(1), WHICH STATES THAT THE RULING IN HELLER  
16 WAS NOT MEANT TO ESSENTIALLY OVERTURN LONG-STANDING  
17 PROHIBITIONS ON FIREARMS BY FELONS OR THE MENTALLY ILL.  
18 OBVIOUSLY, THIS CASE DOESN'T DEAL WITH A FELON. IT HAS TO DO  
19 WITH A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE.

20           FURTHERMORE, THE IMPORTANT WORD THAT WE'D LIKE THE  
21 COURT TO FOCUS ON IN THAT LANGUAGE IS "LONG-STANDING." THE  
22 GOVERNMENT ATTEMPTS TO ARGUE THAT BECAUSE THE COURT  
23 DETERMINED THE FELON IN POSSESSION OF THE STATUTE, WHICH WAS  
24 PASSED IN 1968, TO BE LONG-STANDING, THAT THE MISDEMEANOR IN  
25 POSSESSION -- OR MISDEMEANANT IN POSSESSION STATUTE, WHICH

1 WAS PASSED IN 1996, SHOULD ALSO BE TERMED LONG-STANDING.  
2 HOWEVER, IT WOULD BE OUR POSITION THAT IF A STATUTE PASSED  
3 MERELY 14 YEARS AGO IS LONG-STANDING WITH REFERENCE TO AN  
4 AMENDMENT THAT WAS IN THE BILL OF RIGHTS, THEN THERE IS  
5 REALLY NOTHING THAT ISN'T LONG-STANDING IN THAT CONTEXT.

6 FURTHERMORE, THE PROHIBITION ON FELONS ACTUALLY GOES  
7 BACK FURTHER THAN THE PASSAGE OF THE 1968 LAW. IT ACTUALLY  
8 TRACES ITS ROOTS BACK TO, I THINK -- I BELIEVE A STATUTE THAT  
9 WAS PASSED IN THE 1930'S REGARDING THE POSSESSION OF  
10 FIREARMS.

11 WHILE THERE IS SOME TRACE EVIDENCE THAT AT THE TIME  
12 OF THE FOUNDING, THERE WERE PROHIBITIONS ON CERTAIN  
13 INDIVIDUALS HAVING FIREARMS, THERE IS NO INDICATION THAT  
14 THERE HAS EVER BEEN ANY PROHIBITION ON A PERSON WHO'S ONLY  
15 BEEN CONVICTED OF A MISDEMEANOR, WHICH FOR A LONG TIME WAS  
16 REFERRED TO AS A PETTY OFFENSE.

17 THERE IS NO LANGUAGE IN HELLER THAT'S DIRECTLY ON  
18 POINT. THERE IS NO LANGUAGE IN ANY NINTH CIRCUIT CASE THAT'S  
19 ON POINT. THE NINTH CIRCUIT'S MOST EXHAUSTIVE ADDRESSING THE  
20 ISSUE OBVIOUSLY IS IN VONGXAY, WERE THEY ARE ADDRESSING  
21 922(G)(1). BUT THE COURT IN THAT INSTANCE REFERS TO THE WORD  
22 FELON EXPLICITLY ON FOUR OR FIVE OCCASIONS AND NOTES THAT IT  
23 WAS THE DEFENDANT'S STATUS AS A FELON IN THAT CASE THAT  
24 BROUGHT HIM UNDER THAT LANGUAGE IN HELLER.

25 AS THE SEVENTH CIRCUIT HAS NOTED, AND ONE OTHER

1 CIRCUIT, BECAUSE THE LANGUAGE IN HELLER DOES NOT DIRECTLY  
2 CONTROL 922(G)(9), IT'S NECESSARY FOR COURTS TO ENGAGE IN THE  
3 APPROPRIATE CONSTITUTIONAL ANALYSIS IN THIS MATTER.

4 NOW, IT'S OUR POSITION THAT THE APPROPRIATE ANALYSIS  
5 WOULD BE THAT THE STATUTE SHOULD BE ANALYZED UNDER STRICT  
6 SCRUTINY. THE SECOND AMENDMENT IS IN THE BILL OF RIGHTS.  
7 IT'S INDICATED -- THE SUPREME COURT CLEARLY INDICATED IN  
8 HELLER THAT RATIONAL BASIS VIEW HAS NO PLACE HERE BECAUSE  
9 WE'RE TALKING ABOUT AN ENUMERATED RIGHT.

10 THE COURT: DIDN'T HELLER CARVE OUT CERTAIN  
11 EXCEPTIONS, REGULATORY EXCEPTIONS TO THE FUNDAMENTAL RIGHT TO  
12 BEAR ARMS?

13 MR. JONES: THAT'S CORRECT, YOUR HONOR. HOWEVER,  
14 IT'S UNCLEAR IN HELLER AS TO THE WAY IN WHICH THEY ARE  
15 CARVING EXCEPTIONS. THERE ARE ESSENTIALLY TWO WAYS THAT --  
16 ONE WOULD BE A SCOPE ARGUMENT, WHICH WOULD SAY THAT THE  
17 SECOND AMENDMENT ITSELF CARVES OUT CERTAIN TYPES OF CONDUCT  
18 OR CERTAIN PEOPLE TO WHICH THE AMENDMENT DOES NOT APPLY.

19 NOW, THAT MAY BE TRUE WITH CERTAIN -- I BELIEVE THAT  
20 MIGHT APPLY TO REGULATIONS REGARDING CERTAIN TYPES OF  
21 FIREARMS, LIKE ASSAULT WEAPONS AND THINGS OF THAT NATURE.  
22 HOWEVER, THERE IS NOTHING IN THE LANGUAGE OF THE SECOND  
23 AMENDMENT THAT INDICATES THAT IT WAS INTENDED TO APPLY ONLY  
24 TO SPECIFIC INDIVIDUALS. SO WHAT WE'RE LEFT WITH THEN IS TO  
25 INTERPRET WHAT THE COURT MEANT WHEN IT PROVIDED FOR THESE

1       EXCEPTIONS.

2               AND I THINK THE MOST NATURAL READING OF HELLER IS TO  
3       DETERMINE THAT THEY ARE SAYING THAT THE REASONS BEHIND THOSE  
4       LAWS IS THAT IT SPECIFICALLY NAMED, NAMELY THE FELON IN  
5       POSSESSION OR PROHIBITIONS ON THE POSSESSION OF FIREARMS BY  
6       THE MENTALLY ILL, PASSED WHATEVER LEVEL OF SCRUTINY THE COURT  
7       IS DETERMINING SHOULD APPLY TO SECOND AMENDMENT CHALLENGES.

8               SO WHILE THE COURT DOES ACKNOWLEDGE THAT THERE ARE  
9       CERTAIN CIRCUMSTANCES UNDER WHICH THE RIGHT CAN BE INFRINGED,  
10      OBVIOUSLY NO RIGHT UNDER OUR CONSTITUTION IS ABSOLUTE. THE  
11      COURT DOES NOT INDICATE NECESSARILY WHETHER THEY ARE  
12      DETERMINING THAT THERE ARE SOME INDIVIDUALS WHO SIMPLY DON'T  
13      HAVE A SECOND AMENDMENT RIGHT SO THERE IS NO ANALYSIS  
14      REQUIRED, WHICH I THINK, LOOKING OVER CONSTITUTIONAL  
15      JURISPRUDENCE AS A WHOLE, WOULD BE A RARITY, ESPECIALLY  
16      CONSIDERING THAT THE SECOND AMENDMENT DOES NOT PLACE ANY  
17      EXPLICIT OR IMPLICIT LIMITATIONS ON THE RIGHT. THE WORDS  
18      USED ARE "THE PEOPLE."

19              BECAUSE OF THAT, I THINK THE MORE NATURAL READING OF  
20      THE OPINION IN HELLER IS THAT THE COURT IS SAYING, WE BELIEVE  
21      THAT SOME OF THESE LONG-STANDING PROHIBITIONS OBVIOUSLY WOULD  
22      PASS THE LEVEL OF SCRUTINY THAT'S REQUIRED. HOWEVER, BEING A  
23      MISDEMEANANT IN POSSESSION OF A FIREARM IS NOT ONE OF THE  
24      ENUMERATED EXCEPTIONS THAT THE COURT STATED. SO IT IS LEFT  
25      TO THE LOWER COURTS TO ANALYZE THOSE ON A CASE-BY-CASE BASIS

1 TO DETERMINE WHETHER OR NOT THE STATUTE MEETS THE LEVEL OF  
2 CONSTITUTIONAL SCRUTINY.

3 OBVIOUSLY WE'RE IN THE UNFORTUNATE POSITION WHERE WE  
4 DON'T KNOW EXACTLY WHAT LEVEL THAT IS, EITHER IT'S  
5 INTERMEDIATE OR STRICT, BUT I THINK GIVEN THE FACT THAT IT'S  
6 AN --

7 THE REPORTER: WAIT, WAIT.

8 THE COURT: SLOW DOWN, SIR.

9 MR. JONES: -- ENUMERATED CONSTITUTIONAL RIGHT, I  
10 BELIEVE THAT STRICT SCRUTINY WOULD BE APPROPRIATE IN THIS  
11 CASE.

12 THE COURT: THERE IS A CONTENTION BETWEEN THE  
13 DEFENSE AND THE GOVERNMENT WITH RESPECT TO THAT PRECLUSION  
14 LANGUAGE, THE EXEMPTION LANGUAGE IN HELLER. THE GOVERNMENT  
15 IS OF THE MIND THAT -- YOU'RE OF THE MIND THAT IT'S DICTA  
16 WITH RESPECT TO OTHER REGULATORY ACTS BY A LEGISLATIVE  
17 BRANCH. THE GOVERNMENT INDICATES THAT -- THE GOVERNMENT  
18 ARGUES THAT IT'S BROADER THAN THE SPECIFIC CIRCUMSTANCES OR  
19 EXAMPLES LAID OUT IN HELLER, AS FAR AS THE GOVERNMENT'S  
20 REGULATED AUTHORITY.

21 MR. JONES: YES, YOUR HONOR.

22 THE COURT: COULD YOU COMMENT ON THAT.

23 MR. JONES: YES.

24 THE GOVERNMENT'S ARGUMENT IN THIS INSTANCE  
25 ESSENTIALLY SEEMS TO BE THAT BECAUSE THE SUPREME COURT



1 INDICATED THAT THERE ARE SOME PERMISSIBLE REGULATORY  
2 MEASURES, THAT ALL REGULATORY MEASURES ARE PERMISSIBLE.  
3 OBVIOUSLY THAT SIMPLY CAN'T HOLD TRUE.

4 YOU KNOW, IF THERE WERE A LAW THAT SAID THAT  
5 BROWN-HAIRED PEOPLE CAN'T HOLD -- CAN'T POSSESS FIREARMS,  
6 THAT WOULD OBVIOUSLY BE A REGULATORY MEASURE. BUT THE WAY  
7 THAT THE SUPREME COURT HAS TRADITIONALLY ADDRESSED  
8 INFRINGEMENTS UPON RIGHTS LIKE THIS IS TO ANALYZE WHAT THE  
9 PURPOSE OF THE STATUTE IS, WHAT THE GOVERNMENT'S PURPOSE IN  
10 PASSING IT IS AND THE EXTENT TO WHICH IT INFRINGES ON A  
11 PERSON'S CONSTITUTIONAL RIGHTS.

12 I DON'T -- I THINK ARGUING OVER WHETHER OR NOT THE  
13 LANGUAGE IN HELLER IS DICTA, ESPECIALLY IN THIS CASE, ISN'T  
14 REALLY APPROPRIATE, BECAUSE THERE IS NO -- THERE IS NO  
15 LANGUAGE THAT IS DIRECTLY ON POINT FOR MR. CHOVAN'S CASE.  
16 OBVIOUSLY, EVEN SUPREME COURT DICTA WOULD BE BINDING UPON A  
17 LOWER COURT.

18 HOWEVER, THE MERE FACT THAT THE COURT STATED THAT  
19 REGULATORY -- THERE ARE REGULATORY MEASURES THAT ARE  
20 APPROPRIATE AND CAN PASS CONSTITUTIONAL MUSTER DOES NOT MEAN  
21 THAT ANY REGULATORY MEASURE THAT THE GOVERNMENT PASSES,  
22 ESPECIALLY ONE THAT'S AS COMPLEX AS 922(G)(9), BECAUSE IN  
23 THIS CASE WE'RE NOT JUST TALKING ABOUT A PROHIBITION ON  
24 MISDEMEANANTS, PEOPLE THAT HAVE BEEN CONVICTED OF A  
25 MISDEMEANOR CRIME OF DOMESTIC VIOLENCE, BUT THERE ARE ALSO

1 THE EXCEPTIONS, WHICH IS CONTAINED UNDER 922(A)(33), WHICH  
2 THEN DIVERTS TO STATE LAW, GETS A LITTLE BIT INTO THE SECOND  
3 MOTION BEFORE THE COURT TODAY.

4 BUT, OBVIOUSLY, IT'S NOT -- IT'S NOT A SIMPLE  
5 REGULATORY MEASURE. THERE IS LOT OF NUANCES, AND IT APPLIES  
6 DIFFERENTLY IN DIFFERENT STATES TO DIFFERENT PEOPLE. AND THE  
7 SUPREME COURT OBVIOUSLY DID NOT UNDERTAKE AN EXHAUSTIVE  
8 REVIEW OF ANY STATUTE FOR THAT MATTER. IT CERTAINLY DOESN'T  
9 CITE 922(G)(9). IT SIMPLY MAKES THIS VAGUE REFERENCE.

10 AND I THINK IT WOULD BE A MISTAKE FOR LOWER COURTS  
11 TO COMPLETELY FORECLOSE ANY CHALLENGE TO ANY REGULATION THAT  
12 WAS CURRENTLY IN EFFECT AT THE TIME OF HELLER, GIVEN THE FACT  
13 THAT HELLER REALLY DID WORK A SEA CHANGE IN THE WAY THAT WE  
14 VIEW THE SECOND AMENDMENT AND PEOPLE'S CONSTITUTIONAL RIGHTS  
15 TO BEAR ARMS. SO THAT WOULD BE OUR POSITION ON THE  
16 GOVERNMENT'S REGULATORY MEASURES LANGUAGE IN HELLER.

17 I ALSO WANTED TO ADDRESS THE SECOND MOTION THAT WE  
18 HAD MADE REGARDING WHETHER OR NOT MR. CHOVAN HAS HAD HIS  
19 CIVIL RIGHTS RESTORED WITHIN THE MEANING OF THE STATUTE.

20 THE COURT: YES.

21 MR. JONES: I THINK A LITTLE BIT OF BACKGROUND IS  
22 USEFUL IN THIS INSTANCE, BECAUSE ORIGINALLY THE SUPREME COURT  
23 IN DICKERSON HAD ADDRESSED THIS ISSUE AND HAD DETERMINED THAT  
24 FEDERAL LAW WOULD CONTROL WHETHER OR NOT A PERSON'S CIVIL  
25 RIGHTS HAD BEEN RESTORED AND HOW THAT EXCEPTION WOULD APPLY.

1 THEN CONGRESS RESPONDED AND SAID -- MADE CLEAR THAT IT WANTED  
2 TO DEFER TO THE STATES TO DETERMINE WHETHER OR NOT A PERSON'S  
3 CIVIL RIGHTS HAD BEEN RESTORED AND WHETHER OR NOT THEIR RIGHT  
4 TO BEAR ARMS HAD CONSEQUENTLY BEEN RETURNED TO THEM.

5 BECAUSE OF CONGRESS' DECISION IN THAT MATTER TO  
6 DEFER TO THE STATES, IT'S CREATED SOME DISPARITIES BETWEEN  
7 HOW DIFFERENT PEOPLE ARE TREATED DEPENDING ON WHAT STATE  
8 THEIR CONVICTION IS IN AND WHAT METHOD THAT STATE USES TO  
9 RESTORE A PERSON'S CIVIL RIGHTS.

10 IN THIS CASE, MR. CHOVAN OBVIOUSLY WAS CONVICTED OF  
11 A MISDEMEANOR ABOUT 14 YEARS AGO. AT THE TIME OF THAT  
12 CONVICTION, HE LOST HIS RIGHT TO BEAR ARMS UNDER CALIFORNIA  
13 LAW FOR TEN YEARS. THAT TEN YEARS HAS EXPIRED. UPON THE  
14 EXPIRATION OF THOSE TEN YEARS, MR. CHOVAN REGAINED HIS RIGHT  
15 TO BEAR ARMS UNDER CALIFORNIA.

16 AND THE GOVERNMENT REFERRED TO A CASE -- THE MOST  
17 RECENT SUPREME COURT CASE ON THE ISSUE -- OF LOGAN. AND  
18 THERE IS SOME LANGUAGE IN LOGAN THAT I SPECIFICALLY WANTED TO  
19 DIRECT THE COURT TO. SPECIFICALLY WHEN THEY STATED THE  
20 HOLDING IN LOGAN, THEY STATED, WE HOLD THAT THE SECTION  
21 921(A)(20) EXCEPTION PROVISION DOES NOT COVER THE CASE OF AN  
22 OFFENDER WHO RETAINS CIVIL RIGHTS AT ALL TIMES AND WHOSE  
23 LEGAL STATUS POST-CONVICTION REMAINED IN ALL RESPECTS  
24 UNALTERED BY ANY STATE DISPENSATION. THAT'S JUST NOT THE  
25 CASE FOR MR. CHOVAN. HIS STATUS, HIS LEGAL STATUS WAS

1        ALTERED. HIS RIGHT TO BEAR ARMS WAS TAKEN AWAY AND THEN  
2        RETURNED BY THE STATE.

3                AND FURTHER IN LOGAN, LATER ON THEY INDICATED THAT  
4        ONE OF THE MAIN PURPOSES THAT CONGRESS HAD IN PASSING THIS  
5        EXEMPTION, IT STATES THAT CONGRESS ALSO SOUGHT TO DEFER TO A  
6        STATE'S DISPENSATION RELIEVING AN OFFENDER FROM DISABLING  
7        EFFECTS OF A CONVICTION.

8                SO IF ONE OF THE MAIN PURPOSES OF CONGRESS IS TO  
9        DEFER TO THE STATE REGARDING WHETHER OR NOT A PERSON'S RIGHTS  
10       ARE DISABLED, THE STATE IN THIS CASE, CALIFORNIA HAS SAID,  
11       WELL, AFTER TEN YEARS, IF YOU DON'T HAVE ANY OTHER  
12       CONVICTIONS, IF YOU DON'T HAVE ANY OTHER PROBLEMS, YOU CAN  
13       BEAR ARMS.

14               ANOTHER THING THAT I THINK THE COURT NEEDS TO KEEP  
15       IN MIND WHEN DETERMINING THAT SECOND MOTION IS THE FACT THAT  
16       LOGAN AND MOST OF THE CASES ADDRESSING WHETHER A PERSON'S  
17       CIVIL RIGHTS HAVE BEEN RESTORED, WERE ALL DECIDED PRE-HELLER,  
18       BEFORE THE SUPREME COURT INDICATED THAT THE RIGHT TO BEAR  
19       ARMS WAS AN INDIVIDUAL RIGHT, AND THAT ALL OF THOSE CASES  
20       THAT DETERMINE THAT THE CIVIL RIGHTS THAT THEY LOOK TO ARE  
21       THE RIGHT TO VOTE, THE RIGHT TO SERVE ON A JURY, THE RIGHT TO  
22       HOLD PUBLIC OFFICE.

23               WHEN THE COURT WAS SAYING THAT, THEY WERE NOT  
24       THINKING OR WERE NOT AWARE OF THE FACT THAT THE SECOND  
25       AMENDMENT WAS AN INDIVIDUAL RIGHT, AND AS THE NINTH CIRCUIT

1 HAS PREVIOUSLY HELD, IT'S OBVIOUSLY THE MOST PROBATIVE RIGHT  
2 AS TO DETERMINE WHETHER OR NOT THE STATE BELIEVES THAT A  
3 PERSON IS STILL DANGEROUS AND SHOULD HAVE THEIR RIGHT TO  
4 POSSESS FIREARMS REVOKED.

5 SO MR. CHOVAN FINDS HIMSELF IN A VERY UNIQUE AND  
6 DIFFICULT SITUATION IN THE SENSE THAT HE WAS ACTUALLY  
7 CONVICTED OF HIS MISDEMEANOR CRIME OF DOMESTIC VIOLENCE  
8 BEFORE THE -- BEFORE CONGRESS MADE IT ILLEGAL FOR  
9 MISDEMEANANTS TO POSSESS FIREARMS. HE WAS TOLD THAT HE WAS  
10 UNABLE TO POSSESS A FIREARM FOR TEN YEARS. THEN AFTER THE  
11 TEN YEARS HAD EXPIRED, HE'S CHARGED FEDERALLY FOR BEING A  
12 MISDEMEANANT IN THE POSSESSION OF A FIREARM.

13 THAT KIND OF LEADS INTO THE ONE FURTHER MOTION THAT  
14 I WANTED TO FILE, WOULD BE THAT THE STATUTE EITHER VIOLATES  
15 DUE PROCESS EITHER FOR FAILURE OF NOTICE OR BECAUSE IT'S VOID  
16 FOR VAGUENESS, BECAUSE THERE IS NO WAY FOR A PERSON LIKE  
17 MR. CHOVAN TO TRULY DISCERN WHETHER OR NOT HE'S GOING TO BE  
18 ELIGIBLE TO POSSESS A FIREARM. IF HE LOOKS AT THE STATUTE,  
19 AS THE SUPREME COURT HAS MADE CLEAR, THEY ARE DEFERRING TO  
20 THE STATES, THEY ARE LOOKING TO THE STATES TO DETERMINE  
21 WHETHER OR NOT A PERSON HAS THE RIGHT TO BEAR ARMS. AND THE  
22 STATE IS TELLING HIM, WELL, AFTER TEN YEARS, YOU'RE GOOD TO  
23 GO.

24 SO I THINK THE EASIEST AND MOST SIMPLE WAY TO LOOK  
25 AT THIS CASE IS, THE STATUTE SAYS WHETHER OR NOT -- IF HIS

1 CIVIL RIGHTS HAVE BEEN RESTORED, HE HASN'T BEEN CONVICTED  
2 WITHIN THE MEANING OF THE STATUTE. MR. CHOVAN AFTER HIS  
3 CONVICTION HAD HIS RIGHT TO BEAR ARMS SUSPENDED FOR TEN  
4 YEARS. THAT TEN YEARS EXPIRED. THERE IS NO EVIDENCE THAT HE  
5 POSSESSED A FIREARM WITHIN THAT TIME FRAME, AND, THUS, HIS  
6 CIVIL RIGHTS WERE RESTORED AT THE EXPIRATION OF THE TEN YEARS  
7 AND HE'S NO LONGER ELIGIBLE FOR PROSECUTION UNDER 922 FOR  
8 THAT CONVICTION.

9 THE LAST MOTION THAT'S BEFORE THE COURT TODAY HAS TO  
10 DO WITH THE EQUAL PROTECTION ARGUMENT. IT'S SIMILAR IN  
11 NATURE TO THE SECOND AMENDMENT ARGUMENT, BUT WHAT IT FOCUSES  
12 ON IS THE FACT THAT MR. CHOVAN IS TREATED DRASTICALLY  
13 DIFFERENTLY FROM OTHER INDIVIDUALS IN OTHER STATES WHO HAVE  
14 SUFFERED SIMILAR CONVICTIONS.

15 IN SOME STATES PEOPLE WHO ARE CONVICTED OF  
16 MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE, THEY LOSE THEIR  
17 CIVIL RIGHTS, BUT ONLY FOR THE TERM OF INCARCERATION. SO IF  
18 A PERSON WAS CONVICTED OF A MISDEMEANOR CRIME OF DOMESTIC  
19 VIOLENCE, SERVED 60 DAYS, AND AFTER THAT 60 DAYS, THEY  
20 RECEIVE THEIR CIVIL RIGHTS BACK, THEY CAN'T BE PROSECUTED.

21 YET, MR. CHOVAN, BECAUSE CALIFORNIA DID NOT TAKE  
22 AWAY HIS RIGHT TO VOTE, HIS RIGHT TO HOLD PUBLIC OFFICE OR  
23 HIS RIGHT TO SERVE ON A JURY, BUT DID TAKE AWAY HIS RIGHT TO  
24 BEAR ARMS -- AND HE ABIDED BY THAT RESTRICTION -- IS TREATED  
25 DRASTICALLY DIFFERENTLY. HE'S ALLOWED TO BE PROSECUTED WHILE

1       THESE OTHER PEOPLE ARE ABLE TO REMAIN FREE FROM PROSECUTION.  
2       AND, PERHAPS, AND AN EVEN MORE EGREGIOUS DISPARITY EXISTS FOR  
3       FELONS. IN MANY STATES, FELONS ARE ABLE, EVEN FELONS WHO  
4       HAVE BEEN CONVICTED OF SERIOUS CRIMES ARE ABLE TO REGAIN  
5       THEIR CIVIL RIGHTS.

6               BASED ON THE GOVERNMENT'S ARGUMENT IN THIS CASE, A  
7       PERSON LIKE MR. CHOVAN WHO'S ONLY EVER BEEN CONVICTED OF A  
8       MISDEMEANOR 14 YEARS AGO IS FOREVER BARRED FROM OWNING A  
9       FIREARM; WHEREAS, A FELON IN ANOTHER DISTRICT -- OR ANOTHER  
10      STATE MIGHT BE ABLE TO REGAIN HIS RIGHT TO BEAR ARMS. IN  
11      FACT, IN SOME STATES, HE WOULD AUTOMATICALLY REGAIN IT AFTER  
12      THE EXPIRATION OF A CERTAIN PERIOD OF TIME.

13             NOW, COURTS HAVE ADDRESSED THIS DISPARITY IN THE  
14      PAST AND REJECTED IT UNDER RATIONAL BASIS REVIEW. HOWEVER,  
15      ALL OF THOSE CASES WERE DECIDED PRE-HELLER. THEY WERE  
16      DECIDED BEFORE THE RIGHT TO BEAR ARMS WAS DECIDED TO BE A  
17      CONSTITUTIONAL INDIVIDUAL RIGHT. ACCORDINGLY, THE RESULT IS  
18      DIFFERENT.

19             MANY COURTS HAVE RECOGNIZED THE ANOMALIES THAT ARE  
20      CREATED BY DEFERRING TO THE STATES TO DETERMINE WHETHER OR  
21      NOT A PERSON'S CIVIL RIGHTS HAVE BEEN RESTORED. HOWEVER,  
22      THEY INDICATED, WELL, THERE IS AT LEAST SOME RATIONAL BASIS  
23      HERE THAT CONGRESS WANTED TO DEFER TO THE STATE TO SEE IF THE  
24      STATE THINKS THAT THE PERSON HAS REGAINED A SENSE OF  
25      RESPONSIBILITY, SUCH THAT THEY SHOULD POSSESS FIREARMS.

1 MR. CHOVAN'S CASE IN TWO RESPECTS PROVIDES A VERY  
2 DIFFERENT CASE. ONE, THE STATE HAS INDICATED THAT THEY  
3 BELIEVE HE'S NO LONGER DANGEROUS IN THE SENSE THAT THEY WOULD  
4 ALLOW HIM TO POSSESS FIREARMS. THE DISPARATE IMPACT IN THIS  
5 CASE IS OBVIOUS -- IT'S OBVIOUSLY VIEWED THROUGH A DIFFERENT  
6 LENS NOW THAT HIS RIGHT TO BEAR ARMS IS A FUNDAMENTAL  
7 CONSTITUTIONAL RIGHT UNDER THE SECOND AMENDMENT.

8 AND WHETHER WE WERE TO VIEW IT UNDER INTERMEDIATE  
9 SCRUTINY OR STRICT SCRUTINY, THE FACT OF THE MATTER IS WE  
10 HAVE DRASTICALLY DIFFERENT RESULTS FOR PEOPLE THAT ARE, YOU  
11 KNOW, NOT ONLY SIMILARLY SITUATED, BUT MR. CHOVAN IS TREATED  
12 MORE HARSHLY THAN SOMEBODY WHO IS IN A MUCH WORSE OR HAS  
13 COMMITTED A MUCH MORE SERIOUS CRIME. SO I DON'T SEE HOW THAT  
14 COULD POSSIBLY MEET THE STANDARDS OF EVEN AN INTERMEDIATE  
15 SCRUTINY, SHOULD THE COURT CHOOSE TO APPLY THAT.

16 THE LAST POINT THAT WE JUST WANT TO MAKE TO THE  
17 COURT WAS TO EMPHASIZE THE CHRONOLOGY OF EVENTS IN THIS CASE,  
18 IS THAT IT'S BEEN 14 YEARS SINCE MR. CHOVAN'S 1996  
19 MISDEMEANOR CONVICTION. THERE IS NO ALLEGATION THAT HE  
20 POSSESSED A FIREARM PRIOR TO 2006 WHEN HIS STATE FEDERAL BAN  
21 HAD EXPIRED. DESPITE THAT FACT, HE IS BEING TREATED  
22 DIFFERENTLY, MORE HARSHLY THAN INDIVIDUALS IN OTHER STATES,  
23 WHO HAVE BEEN CONVICTED OF SERIOUS FELONIES. I THINK THAT'S  
24 A VERY CLEAR AND OBVIOUS EXAMPLE OF AN EQUAL PROTECTION  
25 VIOLATION, ESPECIALLY WHEN THE COURT TAKES INTO ACCOUNT THE



1 NATURE OF THE RIGHT INVOLVED IN THIS CASE.

2 THE COURT: ALL RIGHT. THANK YOU, SIR.

3 I'D LIKE TO HEAR FROM THE GOVERNMENT.

4 MS. HAN: YOUR HONOR, WE RESPONDED TO MANY OF THESE  
5 SAME ARGUMENTS IN OUR PAPERS, SO I'M GOING TO JUST RESPOND  
6 BRIEFLY.

7 YOUR HONOR, IT IS INDEED OUR POSITION THAT 922(G)(9)  
8 IS A PRESUMPTIVELY LAWFUL MEASURE THAT HELLER SPECIFICALLY  
9 CARVED OUT. AND, IN FACT, THE NINTH CIRCUIT ITSELF AGREES  
10 THAT THAT LANGUAGE IS NOT DICTA, NOT IN RELATION TO  
11 922(G)(9), BUT IN RELATION TO 922(G)(1), AS THEY FOUND  
12 RECENTLY IN VONGXAY. AND FOR THE RECORD, THAT'S V, AS IN  
13 VICTOR, O-N-G-X-A-Y.

14 AND, YOUR HONOR, THE REASON THAT 922(G)(9) IS, IN  
15 FACT, A PRESUMPTIVELY LAWFUL MEASURE, WE SET FORTH IN OUR  
16 PAPERS, DOMESTIC VIOLENCE IS A VERY SERIOUS CRIME, AND IT IS  
17 NOT A CRIME THAT CAN BE LIKENED TO A FELONY OF LYING TO A  
18 FEDERAL OFFICER, PER SE, BECAUSE VIOLENCE IS SPECIFIC TO THE  
19 DOMESTIC VIOLENCE MISDEMEANOR. IT REQUIRES THAT AN ACT OF  
20 VIOLENCE WOULD HAVE OCCURRED. AND SO BASED ON ALL OF THAT,  
21 WE DO BELIEVE THAT IT IS A PRESUMPTIVELY LAWFUL MEASURE.

22 WE ALSO DO NOT BELIEVE THAT STRICT SCRUTINY APPLIES.  
23 MR. JONES TALKED ABOUT THE SECOND AMENDMENT AND THAT IT IS,  
24 IN FACT, A FUNDAMENTAL RIGHT AND THAT IT ONLY REFERS TO THE  
25 PEOPLE. WELL, IN FACT, THE PEOPLE IN THAT TIME PERIOD WOULD

1 HAVE BEEN WHITE LANDOWNERS AT THAT POINT. AND EVEN IF IT IS  
2 A FUNDAMENTAL RIGHT, THERE WERE, IN FACT, RESTRICTIONS GOING  
3 ALL THE WAY BACK TO 1689 AND THE DECLARATION OF RIGHTS, THE  
4 ENGLISH DECLARATION OF RIGHTS. THERE WERE, IN FACT,  
5 RESTRICTIONS THAT WERE PLACED ON THE PEOPLE, WHOEVER THEY MAY  
6 BE, IN TERMS OF OWNING GUNS.

7 AND EVEN IN THAT TIME PERIOD, WHERE MANY PEOPLE  
8 OWNED GUNS BECAUSE THEY HAD TO SHOOT THEIR OWN FOOD AND  
9 WHATNOT, AND THEY WERE TRYING TO CONQUER THE WEST, INDEED  
10 RESTRICTIONS EXISTED. AND WE CITED A COUPLE OF THOSE IN OUR  
11 PAPERS. FOR EXAMPLE, IN VIRGINIA, VIRGINIA DISARMED PEOPLE  
12 WHO REFUSED TO SWEAR TO AN OATH OF LOYALTY. IN ADDITION,  
13 YOUR HONOR, DURING THAT TIME PERIOD, DOMESTIC VIOLENCE WAS A  
14 CRIME; AT LEAST IN A COUPLE OF THE COLONIES IT WAS A CRIME.

15 SO IN THAT WAY, IN TRYING TO APPLY STRICT SCRUTINY  
16 TO THIS FUNDAMENTAL RIGHT IS THE DEFENDANT'S ATTEMPT TO GIVE  
17 HIMSELF MORE RIGHTS THAN PEOPLE HAD EVEN AT THE TIME OF THE  
18 BILL OF RIGHTS. AND SO FOR THAT REASON STRICT SCRUTINY DOES  
19 NOT APPLY AT ALL.

20 WE BELIEVE THAT INTERMEDIATE SCRUTINY DOES APPLY AND  
21 WE'D LIKE TO GO INTO FURTHER DISCUSSION OF THAT IN WRITING  
22 FIRST BEFORE WE ARGUE THAT PARTICULAR POINT. I HAD  
23 ANTICIPATED THAT THERE WOULD BE ADDITIONAL BRIEFING AND THAT  
24 WE WOULD ARGUE THAT POINT. BUT FOR THAT REASON, WE BELIEVE  
25 THAT INTERMEDIATE SCRUTINY DOES, IN FACT, APPLY.

1 ADDRESSING THE NEXT POINT, AS TO THE ISSUE OF  
2 VALERIO AND WHETHER OR NOT THE DEFENDANT'S RIGHTS HAVE BEEN  
3 RESTORED. YOUR HONOR, I THINK THAT VALERIO IS VERY  
4 INDICATIVE THERE, BECAUSE THAT DEFENDANT HAD, IN FACT, HAD  
5 TWO RIGHTS RESTORED: HIS RIGHT TO VOTE AND HIS RIGHT TO BEAR  
6 ARMS AS WELL. AND THE NINTH CIRCUIT FOUND IN THAT CASE  
7 THAT -- IN CITING CARON FOUND -- AND THIS IS CITED IN MY  
8 PAPERS -- THAT CONGRESS MEANT TO KEEP GUNS AWAY FROM ALL  
9 OFFENDERS WHO THE FEDERAL GOVERNMENT FEARED MIGHT CAUSE HARM,  
10 EVEN IF THOSE PERSONS WERE NOT DEEMED DANGEROUS BY THE STATE.

11 AND SO IN THAT WAY, VALERIO FOUND THAT EVEN IF A  
12 STATE -- IN PARTICULAR, IN THIS CASE, NEW MEXICO. NEW MEXICO  
13 EVEN FILED AN AMICUS BRIEF IN THAT CASE, SAYING THAT THEY  
14 FELT THAT THAT DEFENDANT DID, IN FACT, HAVE THE RIGHT TO  
15 POSSESS FIREARMS. THE NINTH CIRCUIT FOUND THAT REGARDLESS OF  
16 ALL THAT, CONGRESS HAS THE RIGHT TO DEEM THAT THERE IS A  
17 CERTAIN SECTION OF THE POPULATION, CERTAIN KINDS OF PEOPLE  
18 WHO, IN FACT, CANNOT POSSESS FIREARMS. AND THAT'S, IN FACT,  
19 WHAT CONGRESS DID WITH 922(G)(9).

20 ON THE DEFENDANT'S NEXT POINT, HE ARGUES THE EQUAL  
21 PROTECTION CLAIM, AND HE ARGUES THAT IN OTHER STATES HE MIGHT  
22 BE ABLE TO POSSESS A FIREARM. BUT, YOUR HONOR, IN CALIFORNIA  
23 ITSELF, EVEN IF THE DEFENDANT WERE ALLOWED TO EXPUNGE HIS  
24 CONVICTION UNDER CALIFORNIA PENAL CODE 1203.4, EVEN IF HE HAD  
25 EXPUNGED HIS CONVICTION DURING THAT TEN-YEAR PERIOD AFTER HIS

1 CONVICTION, THE STATUTE SPECIFICALLY SAYS THAT HE -- THAT IT  
2 WOULD NOT PROHIBIT HIM FROM BEING PROSECUTED UNDER FEDERAL  
3 FIREARM REGULATIONS.

4 AND SO EVEN IN THIS CASE, WHERE HE'S JUST OUTSIDE OF  
5 THIS TEN-YEAR PERIOD, BUT EVEN WITHIN THAT TEN-YEAR PERIOD  
6 EVEN IF HE HAD GOTTEN HIS CONVICTION EXPUNGED, WHICH HE DID  
7 NOT, CALIFORNIA WOULD NOT HAVE ALLOWED HIM TO POSSESS A  
8 FIREARM.

9 GOING BACK TO THIS EQUAL PROTECTION CLAIM THAT HE  
10 HAS. HE'S NOT PART OF ANY SUSPECT CLASS. AND SO, IN FACT,  
11 YOU KNOW, THE NINTH CIRCUIT HAS ADDRESSED THESE ISSUES IN THE  
12 PAST WITH 922(G)(9); ADMITTEDLY, THEY DID DO SO PRE-HELLER.  
13 BUT IT DOESN'T CHANGE THE FACT THAT -- IT DOES NOTE THAT  
14 SOMEONE WITH A FELONY MIGHT BE ABLE TO POSSESS A FIREARM IN  
15 ANOTHER STATE, WHEREAS HE CANNOT. YOUR HONOR, THERE IS A  
16 REASON FOR THAT. AND IT ALL GOES BACK TO, AGAIN, THE BASICS  
17 OF THE OFFENSE, WHICH IS THE FACT THAT HE HAS A MISDEMEANOR  
18 CRIME OF DOMESTIC VIOLENCE, WHICH HAS AN ACT OF VIOLENCE AS  
19 THE ESSENTIAL PART OF THAT CRIME.

20 AND SO BASED ON ALL OF THAT, WE BELIEVE THAT HIS  
21 MOTION SHOULD BE DENIED. BUT WE DO WISH TO ADDRESS IN  
22 WRITING MORE SPECIFICALLY OUR ARGUMENT AS TO WHY INTERMEDIATE  
23 SCRUTINY SHOULD APPLY.

24 THE COURT: ALL RIGHT. THANK YOU.

25 VALERIO, SIR. HOW IS YOUR CASE DIFFERENT FROM THE

1 NEW MEXICO CASE?

2 MR. JONES: YOUR HONOR, IN THE VALERIO CASE, THE  
3 DEFENDANT HAD NOT AT ALL -- DID NOT HAVE ALL OF HIS CIVIL  
4 RIGHTS AT THE TIME THAT THE COURT WAS DECIDING IT. HE WAS  
5 TRYING TO SAY, I'VE RECEIVED THESE RIGHTS BACK AND THAT  
6 SHOULD BE ENOUGH. AND THE COURT SAID, WELL, THE RESTORATION  
7 OF RIGHTS DOESN'T HAVE TO BE COMPLETE, BUT IT HAS TO BE  
8 SUBSTANTIAL. AND THEN IT WENT THROUGH THE LIST OF RIGHTS  
9 THAT HAVE BEEN TAKEN AWAY AND WHICH ONES HAD BEEN GOTTEN  
10 BACK.

11 THE REASON THAT THIS CASE IS DIFFERENT IS MR. CHOVAN  
12 IS NOT WITHOUT ANY OF HIS RIGHTS. HE HAS EVERY CIVIL RIGHT  
13 THAT ANY OTHER PERSON IN THE STATE OF CALIFORNIA HAS. HE HAS  
14 THE RIGHT TO VOTE, THE RIGHT TO SIT ON A JURY, THE RIGHT TO  
15 HOLD PUBLIC OFFICE AND THE RIGHT TO BEAR ARMS; SO THAT MAKES  
16 HIM VERY DIFFERENTLY SITUATED FROM THE DEFENDANT IN VALERIO,  
17 WHO HAD HAD SOME OF HIS RIGHTS, AND THE COURT WAS ATTEMPTING  
18 TO DETERMINE, WELL, HAS IT BEEN ENOUGH FOR US TO SAY THAT  
19 HE'S HAD HIS CIVIL RIGHTS RESTORED. WELL, IF YOU'VE ONLY HAD  
20 ONE CIVIL RIGHT TAKEN AWAY, YOU CAN ONLY GET ONE BACK.

21 BUT IT DOES REPRESENT -- AND BECAUSE IT WAS THE  
22 RIGHT TO BEAR ARMS, IT DOES REPRESENT THE STATE SAYING, WE'VE  
23 DETERMINED THAT THIS PERSON, AFTER TEN YEARS, NO LONGER POSES  
24 THE THREAT THAT THEY USED TO AND CAN POSSESS FIREARMS.

25 THE COURT: WHAT ABOUT THE COURT'S DISCUSSION OF THE

1 CONGRESSIONAL INTENT IN CASES LIKE THIS WHERE A PERSON SHOULD  
2 NEVER HOLD A FIREARM -- POSSESS A FIREARM BECAUSE OF THE  
3 NATURE OF THE CRIME ITSELF?

4 MR. JONES: YES, YOUR HONOR. AND THAT WAS -- ONE  
5 POINT I WANTED TO MAKE, IS THAT LANGUAGE IN VALERIO ACTUALLY  
6 WHERE THEY SAY, THE PURPOSE OF THE STATUTE WAS TO MAKE SURE  
7 THAT ANYBODY WHO HAS HAD THESE OFFENSES IS PREVENTED FROM  
8 HAVING A FIREARM, IS ACTUALLY CONTRADICTED BY THE LANGUAGE  
9 THAT I INDICATED IN THE SUPREME COURT CASE LOGAN BEFORE THAT  
10 INDICATED THAT ONE OF THE PRIMARY PURPOSES WAS TO DEFER TO  
11 THE STATES. THAT'S THE LANGUAGE THAT THEY USE, TO DEFER TO A  
12 STATE'S DISPENSATION RELIEVING AN OFFENDER FROM DISABLING  
13 EFFECTS OF A CONVICTION.

14 CONGRESS MADE A VERY EXPLICIT CHOICE AFTER THE  
15 SUPREME COURT IN DICKERSON HELD THAT THE -- THAT THEY WOULD  
16 GO ONLY BY FEDERAL LAW AND THAT IT WOULD BE FEDERALLY  
17 DETERMINED UNIFORMLY. CONGRESS WENT OUT AND TOOK THE EXTRA  
18 INITIATIVE AND SAID, WE'RE GOING TO OVERTURN DICKERSON BY  
19 STATUTE, AND WE'RE GOING TO DEFER TO THE STATES TO LET THEM  
20 DECIDE.

21 SO IT'S NOT -- SO THE LANGUAGE IN VALERIO REGARDING  
22 CONGRESS' INTENT IS ACTUALLY CONTRADICTED BY THE SUPREME  
23 COURT PRECEDENT, WHICH SAYS THAT ONE OF THE PURPOSES OF THAT  
24 STATUTE WAS TO DEFER TO THE STATES TO MAKE THIS  
25 DETERMINATION. AND THAT'S REALLY WHERE MOST OF THESE

1 PROBLEMS COME FROM, IT'S FROM CONGRESS' DECISION TO DEFER TO  
2 THE STATES TO MAKE THESE TYPES OF DETERMINATIONS.

3 THE COURT: BUT AREN'T I REQUIRED TO FOLLOW NINTH  
4 CIRCUIT LAW?

5 MR. JONES: WELL, I BELIEVE YOUR -- IF THERE IS  
6 BINDING SUPREME COURT PRECEDENT ON THE ISSUE, I BELIEVE  
7 YOU'RE REQUIRED TO FOLLOW SUPREME COURT CASE LAW; ESPECIALLY  
8 CONSIDERING THAT LOGAN CAME AFTER VALERIO.

9 A COUPLE OTHER POINTS THAT I WANTED TO ADDRESS --

10 THE COURT: BEFORE YOU DO -- I'LL ALLOW YOU TO  
11 REBUT -- BUT HOW AM I GUIDED TO FOLLOW YOUR ARGUMENT THAT ALL  
12 PERSONS UNDER THE SECOND AMENDMENT IS A SUSPECT CLASS THAT  
13 WARRANTS STRICT SCRUTINY?

14 MR. JONES: WELL, YOUR HONOR, UNDER EQUAL PROTECTION  
15 JURISPRUDENCE, YOU CAN REACH HEIGHTENED SCRUTINY NOT ONLY BY  
16 THE FACT THAT A SUSPECT CLASS IS INVOLVED, BUT IF PEOPLE ARE  
17 BEING DIFFERENTIATED WITH REGARD TO A FUNDAMENTAL RIGHT.

18 IT'S OUR POSITION THAT THE RIGHT TO BEAR ARMS UNDER  
19 THE SECOND AMENDMENT IS A FUNDAMENTAL RIGHT AND, THUS, UNDER  
20 EQUAL PROTECTION, FOR THAT REASON, IT WOULD BE -- ANY STATUTE  
21 INFRINGING OR ANY STATUTE TREATING PEOPLE DIFFERENTLY, WHO  
22 ARE SIMILARLY SITUATED, WOULD BE SUBJECT TO A HIGHER LEVEL OF  
23 SCRUTINY BECAUSE OF THE FUNDAMENTAL RIGHT.

24 WE DO NOT CONTEND THAT MR. CHOVAN IS A MEMBER OF A  
25 SUSPECT CLASS, AS CASE LAW HAS CLEARLY INDICATED THAT PEOPLE

1 CONVICTED OF A CRIME DO NOT CONSTITUTE A SUSPECT CLASS.

2 THE COURT: ALL RIGHT. YOU MAY CONTINUE, SIR.

3 REBUTTAL.

4 MR. JONES: THE ONLY OTHER POINTS THAT I WANTED TO  
5 MAKE WERE THAT THE GOVERNMENT INDICATED THAT DOMESTIC  
6 VIOLENCE IS A VERY SERIOUS CRIME, AND THAT'S WHY WE SHOULD  
7 PRESUME THAT THIS IS A PRESUMPTIVELY LAWFUL REGULATION; BUT I  
8 THINK THAT SOMEWHAT CONFUSES THE ISSUE. IF WE'RE GOING TO GO  
9 TO THE STEP THAT WE'RE SAYING, OKAY, HOW IMPORTANT IS THE  
10 GOVERNMENT'S INTEREST, THEN THAT MEANS WE HAVE TO GET INTO  
11 WHAT LEVEL OF SCRUTINY WE'RE TALKING ABOUT AND PERFORM THAT  
12 DETAILED ANALYSIS.

13 THE MERE FACT THAT SOME PEOPLE MAY VIEW IT AS  
14 IMPORTANT THAT WE KEEP FIREARMS OUT OF THE HANDS OF PEOPLE  
15 WHO HAVE BEEN CONVICTED OF DOMESTIC VIOLENCE DOES NOT AFFECT  
16 THE -- ESSENTIALLY THE PLAIN LANGUAGE OR TRADITIONALIST LOOK  
17 AT THE SECOND AMENDMENT TO DETERMINE WHETHER OR NOT SOME  
18 PEOPLE ARE JUST EXCLUDED AND NOT -- DO NOT HAVE THAT  
19 CONSTITUTIONAL RIGHT.

20 SO THE CONTEMPORARY CONCERN AS TO WHETHER OR NOT THE  
21 LAW IS APPROPRIATE OR THE IMPORTANCE OF IT SHOULD NOT FACTOR  
22 INTO DETERMINING WHETHER OR NOT WE APPLY SCRUTINY. IT SHOULD  
23 BE A DETERMINATION OF WHETHER OR NOT THE SUPREME COURT'S  
24 LANGUAGE IN HELLER SPECIFICALLY FORECLOSES THE ARGUMENT THAT  
25 MR. CHOVAN IS PRESENTING.



1 THE GOVERNMENT ALSO INDICATED THAT DOMESTIC VIOLENCE  
2 WAS A CRIME AT THE TIME OF THE FOUNDING. WELL, IT WAS A  
3 CRIME, AND IT -- ALSO AT THE TIME OF THE FOUNDING, THE PEOPLE  
4 WHO WERE CONVICTED OF IT WERE NOT PREVENTED FROM POSSESSING  
5 FIREARMS; SO I THINK THAT THAT FACT OR THAT POINT GOES BOTH  
6 WAYS.

7 AND THE LAST THING IS, IN ADDRESSING THE EQUAL  
8 PROTECTION ARGUMENT, THE GOVERNMENT ADDRESSED ARGUMENTS THAT  
9 FELONS IN OTHER DISTRICTS MIGHT BE ABLE TO HAVE THEIR RIGHTS  
10 RESTORED, WHERE MR. CHOVAN CANNOT, BY SAYING THAT THERE IS A  
11 REASON FOR THAT, THAT BECAUSE MR. CHOVAN HAS BEEN CONVICTED  
12 OF A CRIME OF DOMESTIC VIOLENCE. I JUST WANT IT TO BE CLEAR  
13 ON THE RECORD THAT PEOPLE WHO HAVE BEEN CONVICTED OF FELONY  
14 CRIMES OF VIOLENCE IN OTHER STATES CAN HAVE THEIR CIVIL  
15 RIGHTS RESTORED AND DO HAVE THEIR CIVIL RIGHTS RESTORED  
16 AUTOMATICALLY AFTER A CERTAIN TIME PERIOD IN OTHER STATES, AS  
17 IS INDICATED IN THE BRIEFING.

18 SO IT'S NOT AS THOUGH THAT THERE IS SOMETHING IN THE  
19 STATUTE THAT DISCRIMINATES BETWEEN PEOPLE THAT HAVE BEEN  
20 CONVICTED OF CRIME AND VIOLENCE AND PEOPLE WHO HAVEN'T.  
21 THERE IS NO DISTINCTION MADE WHATSOEVER. AND PEOPLE WHO HAVE  
22 BEEN CONVICTED OF CRIMES OF VIOLENCE THAT ARE MUCH MORE  
23 SERIOUS AND HAVE RECEIVED MUCH MORE SERIOUS SENTENCES THAN  
24 MR. CHOVAN ARE IN A BETTER POSITION WITH REGARD TO THIS LAW,  
25 BECAUSE THEY CAN HAVE THEIR CIVIL RIGHTS RESTORED PRESUMING,

1 OF COURSE, OBVIOUSLY THAT THE COURT IS NOT DETERMINING THAT  
2 MR. CHOVAN HAS HAD HIS CIVIL RIGHTS RESTORED, BECAUSE HIS  
3 RIGHT TO BEAR ARMS HAS BEEN REINSTATED.

4 THE COURT: GOING BACK TO YOUR RESPONSE BEFORE THAT,  
5 YOUR RESPONSE BEFORE THAT ONE DEALING WITH THE  
6 PRE-CONSTITUTIONAL HISTORY WHERE RIGHTS -- WHERE INDIVIDUALS  
7 DID NOT HAVE A RIGHT TO BEAR ARMS BECAUSE OF CIRCUMSTANCES  
8 SHORT OF A CONVICTION AT ALL. THAT WAS THE VIRGINIA  
9 CIRCUMSTANCE WHERE IF YOU WEREN'T LOYAL, TO PLEDGE LOYALTY,  
10 THEN YOU HAD NO RIGHT TO CARRYING A GUN. THERE IS NO CRIME  
11 INVOLVED AT ALL. AND THAT WAS PRE-BILL OF RIGHTS, PRE-SECOND  
12 AMENDMENT.

13 MR. JONES: THAT'S CORRECT, YOUR HONOR. I MEAN --

14 THE COURT: SO THERE IS A GOVERNMENT REGULATION THAT  
15 REQUIRED -- THAT RESTRICTED THE USE OF FIREARMS EVEN WITHOUT  
16 A CONVICTION AT ALL.

17 MR. JONES: YES, YOUR HONOR. THAT IS CORRECT THAT  
18 THERE WAS THAT ONE REGULATION. HOWEVER, FIRST OF ALL, I  
19 THINK WE HAVE TO LOOK BROADER THAN SIMPLY ONE REGULATION.

20 BUT ANOTHER -- ANOTHER POINT REGARDING THE -- THIS  
21 LOOK AT HISTORY TO DETERMINE WHETHER OR NOT A PERSON HAD THE  
22 RIGHT TO POSSESS A FIREARM IS WHEN THE SUPREME COURT IN  
23 HELLER INDICATED PRESUMPTIVELY LAWFUL REGULATIONS, IF WE'RE  
24 GOING TO SAY, OKAY, WELL, AT THE TIME OF THE FOUNDING, THERE  
25 WAS ONE COLONY THAT SAID, YOU KNOW, IF YOU DON'T PLEDGE US

1 ALLEGIANCE, IF YOU HAVE LOYALTIES ELSEWHERE, YOU CAN'T  
2 POSSESS A FIREARM; THEREFORE, ALL REGULATIONS ARE  
3 APPROPRIATE, THEN HELLER WOULD BE WRONGLY DECIDED.

4 HELLER STRIKES DOWN A REGULATION. HELLER SAYS THAT  
5 THE DISTRICT OF COLOMBIA'S REGULATION REGARDING THE HANDGUN  
6 BAN IS UNCONSTITUTIONAL. THAT IS -- YOU KNOW, THAT IS A  
7 REGULATION THAT THE SUPREME COURT SAID VIOLATES THE SECOND  
8 AMENDMENT.

9 IF WE WERE TO SAY, MERELY BECAUSE THERE WERE LAWS  
10 THAT ALLOW THE GOVERNMENT TO PREVENT SOMEBODY FROM POSSESSING  
11 A FIREARM AT THE TIME OF THE FOUNDING, THEREFORE, ANY  
12 REGULATION THAT THE GOVERNMENT CAN COME UP WITH IS GOING TO  
13 BE PRESUMPTIVELY LAWFUL, SUCH THAT WE WON'T EVEN ENGAGE IN  
14 ANY SORT OF SCRUTINY TO DETERMINE WHAT THE GOVERNMENT'S  
15 REASONING BEHIND IT IS, I THINK THAT WOULD COMPLETELY MAKE  
16 HELLER A NULLITY. IT WOULD HAVE NO EFFECT BEYOND ITS FACTS  
17 AT THAT POINT. AND I THINK THE LANGUAGE IN HELLER IS VERY  
18 STRONG AND CLEAR THAT WE'RE SAYING THAT THIS IS AN INDIVIDUAL  
19 RIGHT.

20 THE COURT: ALL RIGHT. THANK YOU.

21 MR. JONES: AND I THINK UNLESS THE COURT HAS OTHER  
22 QUESTIONS, THAT WE WOULD SUBMIT.

23 THE COURT: ALL RIGHT. THANK YOU.

24 ANYTHING FURTHER FROM THE UNITED STATES?

25 MS. HAN: YOUR HONOR, JUST BRIEFLY, ON A COUPLE OF

1 POINTS, SPECIFICALLY TO THE ISSUE ABOUT THE SECOND AMENDMENT  
2 RIGHT BEING A FUNDAMENTAL RIGHT AND STRICT SCRUTINY APPLYING.

3 YOUR HONOR, EVEN IN OTHER FUNDAMENTAL RIGHTS, FOR  
4 EXAMPLE, THE FIRST AMENDMENT, THERE ARE, IN FACT, SOME  
5 RESTRICTIONS THAT ARE PLACED ON THAT UNDER A CONSTITUTIONAL  
6 ANALYSIS; FOR EXAMPLE, A TIME, PLACE AND MANNER.

7 AND SO, AGAIN, THE DEFENDANT ATTEMPTS TO GIVE  
8 HIMSELF MORE RIGHTS THAN WERE GIVEN TO OTHER FUNDAMENTAL  
9 RIGHTS AND EVEN MORE RIGHTS TO -- THAN WERE GIVEN TO THE  
10 PEOPLE AT THE TIME OF THE FOUNDING OF THE NATION, IT SEEMS  
11 INAPPROPRIATE AT THIS POINT.

12 IN ADDITION, YOUR HONOR, SPECIFICALLY PRIOR -- IN  
13 HIS EARLIER ARGUMENT, THE DEFENDANT HAD DISCUSSED AN ISSUE IN  
14 TERMS OF EQUAL PROTECTION ABOUT HIS KNOWLEDGE OF THE  
15 RESTRICTION ON HIM TO POSSESS THE FIREARMS. SPECIFICALLY,  
16 YOUR HONOR, AS TO THIS CASE, IT'S NOT AN ISSUE. THE  
17 DEFENDANT SOUGHT TO PURCHASE A FIREARM AND WAS THEN NOTIFIED  
18 THAT, IN FACT, HE WAS NOT ALLOWED TO BUY A FIREARM. THAT  
19 OCCURRED IN OCTOBER OF 2009. THE EXECUTION OF THE SEARCH  
20 WARRANT ON HIS HOME OCCURRED IN APRIL OF 2010. SO THE ISSUE  
21 OF NOTICE IS NOT ONE THAT I THINK IS A VALID CLAIM IN THIS  
22 PARTICULAR CASE.

23 SO -- AND WITH THAT, WE WOULD SUBMIT.

24 THE COURT: ALL RIGHT. THANK YOU.

25 I'M GOING TO TAKE THIS MATTER UNDER SUBMISSION AND

1 SET IT OVER TO THE 19TH OF JULY, 10:30. AND IF -- DURING THE  
2 COURSE OF MY REVIEW, IF I DETERMINE THAT SUPPLEMENTAL  
3 BRIEFING ON THE LEVEL OF EVALUATION IS NECESSARY, I'LL LET  
4 THE PARTIES KNOW BY ORDER. ALL RIGHT.

5 BUT I'D LIKE TO TAKE A LOOK AT THE BIDDING AS IT IS  
6 NOW. I'VE REVIEWED IT. IN LIGHT OF THIS ARGUMENT, I'D LIKE  
7 TO TAKE -- RELOOK AT THE BIDDING. AND THE MATTER IS UNDER  
8 SUBMISSION.

9 OUR NEXT DATE IS, SIR, THE 19TH OF JULY, 10:30.

10 THE DEFENDANT: THANK YOU, YOUR HONOR.

11 MR. JONES: YOUR HONOR, THERE IS ONE OTHER MATTER I  
12 WANTED TO DIRECT THE COURT'S ATTENTION TO.

13 WE DID JUST THIS MORNING, OVER THE WEEKEND, FILE A  
14 DECLARATION THAT WOULD DIRECT THE COURT'S ATTENTION TO --  
15 WITH REGARD TO THE SECOND AMENDMENT VIOLATION, INDICATING  
16 THAT MR. CHOVAN, THE PURPOSE FOR WHICH THE FIREARMS WERE KEPT  
17 IN MR. CHOVAN'S HOME WERE FOR SELF-DEFENSE, AS I THINK THAT  
18 COULD PLAY INTO THE SECOND AMENDMENT ANALYSIS.

19 THE COURT: I HAVE NOT SEEN IT. THE COURT WILL  
20 ACCEPT IT. I'LL ALLOW THE GOVERNMENT TO RESPOND TO THE  
21 DECLARATION BY NEXT MONDAY, IF YOU CARE TO DO SO, THE 28TH OF  
22 JUNE.

23 MS. HAN: YES, YOUR HONOR. THANK YOU.

24 YOUR HONOR, COULD WE ALSO SET A MOTION SCHEDULE FOR  
25 THE REST OF THE MOTIONS THAT MR. JONES REFERRED TO THAT HE

1 WANTED TO FILE, SO THAT WE CAN GO AHEAD AND --

2 THE COURT: ALL RIGHT. HOW LONG WOULD IT TAKE YOU  
3 TO FILE THOSE MOTIONS, SIR? HOW MUCH TIME DO YOU NEED?  
4 YOU'RE SPEAKING MOTIONS WITH RESPECT TO SUPPLEMENTAL BRIEFING  
5 ON THESE ISSUES?

6 MR. JONES: NO, YOUR HONOR. SPECIFICALLY ONE -- IT  
7 WOULD BE A SOMEWHAT SIMILAR ISSUE WITH REGARD TO DUE PROCESS  
8 WITH THE NOTICE ISSUE THAT COUNSEL JUST ADDRESSED AND ALSO  
9 ONE FOR VAGUENESS THAT I SPOKE ABOUT, AND ALSO REGARDING THE  
10 UNDERLYING CONVICTION IN THIS CASE.

11 SO I COULD HAVE THEM FILED TWO WEEKS IN ADVANCE OF  
12 THE JULY 19TH DATE, IF THAT'S -- SO THE 5TH I GUESS THAT  
13 WOULD BE.

14 THE COURT: NO. IF I SUGGEST SUPPLEMENTAL BRIEFING  
15 ON THIS POINT, I'D LIKE TO BE ABLE TO FULLY DIGEST THAT AS  
16 OPPOSED TO THE NEW MOTIONS AT THE SAME TIME, IN LIGHT OF MY  
17 CALENDAR, SIR.

18 MR. JONES: OKAY.

19 THE COURT: WE'LL SET A FURTHER HEARING DATE FOR  
20 9 AUGUST FOR OTHER MOTIONS. SO WE'LL HAVE TWO MOTION HEARING  
21 DATES. SIR, THE 19TH OF JULY AND 9 AUGUST FOR NEW MOTIONS TO  
22 BE FILED.

23 MR. JONES: OKAY. AND WHAT'S THE TIME ON  
24 AUGUST 9TH?

25 THE COURT: 10:30.

1           MR. JONES:   THANK YOU, YOUR HONOR.

2           THE COURT:   ALL RIGHT.   ANYTHING ELSE AT THIS POINT?

3           MS. HAN:   NO, YOUR HONOR.

4           THE COURT:   APPRECIATE YOUR INPUT.   THANK YOU VERY  
5   MUCH.

6           MR. JONES:   THANK YOU, YOUR HONOR.

7           THE DEFENDANT:   THANK YOU, YOUR HONOR.

8           THE COURT:   THANK YOU, SIR.

9           (PROCEEDINGS CONCLUDED AT 11:30 A.M.)

10                               --000--

11                               C E R T I F I C A T I O N

12                       I HEREBY CERTIFY THAT I AM A DULY APPOINTED,  
13   QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED  
14   STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND  
15   CORRECT TRANSCRIPT OF THE PROCEEDINGS HAD IN THE  
16   AFOREMENTIONED CAUSE; THAT SAID TRANSCRIPT IS A TRUE AND  
17   CORRECT TRANSCRIPTION OF MY STENOGRAPHIC NOTES; AND THAT THE  
18   FORMAT USED HEREIN COMPLIES WITH THE RULES AND REQUIREMENTS  
19   OF THE UNITED STATES JUDICIAL CONFERENCE.

20                       DATED:   APRIL 4, 2011, AT SAN DIEGO, CALIFORNIA.

21   S/CAMERON P. KIRCHER  
22   CAMERON P. KIRCHER  
23  
24  
25